

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ISAAC MARTINEZ,) 1:11-cv-00215-OWW-SKO-HC
Petitioner,)
) ORDER RE: FINDINGS AND
) RECOMMENDATIONS AND REFERRING THE
) MATTER BACK TO THE MAGISTRATE
v.) JUDGE (Docs. 1, 5)
)
JAMES D. HARTLEY,) ORDER DISMISSING PETITIONER'S
Respondent.) FIRST, SECOND, THIRD, AND FIFTH
) CLAIMS WITHOUT LEAVE TO AMEND
) (Doc. 1)
)

ORDER DISMISSING PETITIONER'S
FOURTH CLAIM WITH LEAVE TO AMEND
AND DIRECTING THE FILING OF A
FIRST AMENDED PETITION NO LATER
THAN TEN DAYS AFTER THE DATE OF
SERVICE OF THIS ORDER (Doc. 1)

Petitioner is a state prisoner proceeding pro se and in forma pauperis with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The matter was referred to the Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1) and Local Rules 302 and 304.

On February 24, 2011, the Magistrate Judge filed findings and recommendations to dismiss some claims in the petition without leave to amend and to dismiss other claims with leave to

1 amend. The findings and recommendations were served on all
2 parties on the same date. The findings and recommendations
3 informed Petitioner that objections were due within thirty days
4 of service.

5 On March 28, 2011, Petitioner filed objections to the
6 findings and recommendations. In the objections, Petitioner
7 consented to the dismissal of his first, second, third, and fifth
8 claims without leave to amend. Further, he indicated that he was
9 filing a first amended petition concerning his fourth claim.

10 In accordance with the provisions of 28 U.S.C. § 636
11 (b) (1) (C), this Court has conducted a *de novo* review of the case.
12 The undersigned has carefully reviewed the entire file and has
13 considered the objections; the undersigned has determined there
14 is no need to modify the findings and recommendations based on
15 the points raised in the objections. The Court finds that the
16 report and recommendation is supported by the record and proper
17 analysis.

18 Accordingly, it IS ORDERED that:

19 1) The findings and recommendations filed on February 4,
20 2011, are ADOPTED in full; and

21 2) The first, second, third, and fifth claims in the
22 petition for writ of habeas corpus are DISMISSED without leave to
23 amend for failure to state claims cognizable in a proceeding
24 pursuant to 28 U.S.C. § 2254; and

25 3) The fourth claim or set of sub-claims concerning due
26 process and double jeopardy relating to prior convictions used in
27 sentencing is DISMISSED with leave to amend, and Petitioner may
28 FILE a first amended petition no later than ten days after the

1 date of service of this order; and

2 4) Pursuant to local rule, the matter is referred back to
the Magistrate Judge for further screening of the first amended
3 petition. IT IS SO ORDERED.

4 **Dated: April 8, 2011**

5 /s/ **Oliver W. Wanger**
6 UNITED STATES DISTRICT JUDGE

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